

In Re: DuPont)
District 2, Map 88, Control Map 88, Parcel 1,)
Special Interest 000) Humphreys County
Industrial Property)
Tax years 2005, 2006)

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In a report admitted as Exhibit 1 at the hearing, the taxpayer's representatives characterized this sprawling industrial facility as a limited-market property which suffered from "excess building area and inefficient movement of goods" as well as inconvenient access to the interstate. Due to the age of the plant and the difficulty of measuring depreciation of the numerous improvements, Mr. Mitro and Ms. Seba did not consider a cost approach in their analysis. Rather, they estimated a value of \$13,800,000 for the subject property on the basis of six sales of industrial buildings in the southeastern United States that occurred between 2000 and 2004.³ All of those properties included much less building and land area; and most were somewhat newer than the subject.

The Assessor and DPA Assistant Director Don Osborne, on the other hand, considered this complex to be a special-purpose property because of its unique layout and design. In their view, the lack of any truly comparable sales necessitated reliance on a Marshall and Swift cost approach in the valuation of such property. While conceding that the configuration of the multiple buildings may not be optimal, Mr. Osborne was not aware of any functional or economic obsolescence – such as might be indicated by reduced operating levels. Further, he testified that the subject parcel had been undervalued in the reappraisal by \$2,592,000 on account of a clerical error whereby the unit price of the "industrial" land (i.e., the 240-acre site) was entered on the property record card as \$1,200.00 instead of \$12,000.00 per acre.

Under applicable state law, "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values...." Tenn. Code Ann. section 67-5-601(a).

Tenn. Code Ann. section 67-5-601(b) provides (in relevant part) that "all property of every kind shall be appraised according to its sound, intrinsic and immediate economic value which shall be ascertained in accordance with such official assessment manuals as may be promulgated and issued by the state division of property assessments and approved by the state board of equalization pursuant to law."

To whatever extent a party seeks to change the current assessment of the property in question, that party has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

A *special-purpose property* is "a limited-market property with a unique physical design, special construction materials, or a layout that restricts its utility to the use for which it was built." Appraisal Institute, The Dictionary of Real Estate Appraisal (4th ed. 2002), p. 272. In UCAR Carbon Co., Inc. (Montgomery County, Tax Year 1994, Initial Decision and Order, April 12, 1995), the parties disagreed as to whether a graphite electrode manufacturing facility that consisted of 26 buildings fit this narrow definition. Construing an excerpt from page 8 of the

³Three of the six selected comparables were Tennessee properties.

State of Tennessee Assessment Manual (1972), Administrative Judge Mark J. Minsky determined that:

...[T]he subject property should technically be classified as a limited-market property....**However,...although the appraisal community distinguishes between limited-market and special-purpose properties, the State of Tennessee Assessment Manual provides that both property types be valued in use rather than in exchange.** [Emphasis added.]

Id. at p. 4.⁴ See also Allied Signal, Inc. (Sumner County, Tax Year 1995, Initial Decision and Order, April 24, 1996).

As a matter of appraisal methodology, then, the proper classification of DuPont's huge titanium dioxide plant may be merely academic. Moreover, even assuming that this facility should be considered a *limited-market property*, the administrative judge is not persuaded that DuPont has established a *prima facie* case for adoption of its drastically lower value. Ms. Seba's sales information, which she did not personally verify, was obtained from unidentified sources. The taxpayer's representatives apparently did not inspect any of those comparables, nor did they specify the amounts of the various adjustments referred to in their submission. As for the purported functional obsolescence, no concrete examples of deficiencies or superadequacies were given.

But neither does the existing record warrant an increase of the present valuation. Undoubtedly the site area is worth more than the excess land, which was valued in the Assessor's computerized mass appraisal system from \$50.00 to \$3,500.00 per acre. Yet neither the Assessor nor DPA introduced any land sales or other probative evidence in support of those values. Hence the administrative judge cannot legitimately conclude that the subject land – much less the property as a whole – has been undervalued. As explained in another case where an assessor sought to raise an appealed assessment because of an error on the property record card:

The Assessment Appeals Commission (created by the State Board pursuant to Tenn. Code Ann. section 67-5-1502) has consistently held that a presumption of correctness attaches to a decision of the county board of equalization. [Citation omitted.] But in this appeal, as in most cases, the State Board has not been formally advised of the determining factors in the county board's decision. It cannot justifiably be inferred, then, that the county board would have set a higher value if it had been aware of the inaccuracy on the property record card. Indeed, the administrative judge cannot even assume that the members of the county board considered the property record card at all in their deliberations.

Republic Builders Products (Henry County, Tax Year 1997, Initial Decision and Order, January 28, 1998), p. 3.

⁴Judge Minsky concluded that "[g]iven the absence of sales of graphite electrode manufacturing facilities, the..subject property should be valued using the cost approach." *Id.* at p. 5. Significantly, he rejected the deductions for functional and economic obsolescence in the taxpayer's cost approach because of the admission that they "would not be appropriate for a value in use appraisal." *Id.* at p. 6.

The administrative judge expresses no opinion on whether the error claimed by the Assessor would be correctable under the terms of Tenn. Code Ann. section 67-5-509.

Order

It is, therefore, ORDERED that the decision of the county board be affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 22nd day of September, 2006.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Leslie S. Seba, CMI, Sr. Tax Agent DuPont
Robert T. Lee, General Counsel, Comptroller of the Treasury
Vickie B. Cowell, Humphreys County Assessor of Property